

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

ROBERT A. LAKE,

Plaintiff,

vs.

HELSPER, HIENBUCK, WARDEN OF
GLEN DIVE, TRISTAN KOHUT, LANCE
GRIFFEN, and LEROY KIRKEGARD,

Defendants.

CV 17-00046-H-DLC-JTJ

FINDINGS AND
RECOMMENDATIONS OF UNITED
STATES MAGISTRATE JUDGE

Plaintiff Robert Lake, a prisoner proceeding without counsel, filed a Complaint alleging excessive force and denial of medical care. (Doc. 1.) On September 15, 2017, the Court issued an Order finding that the Complaint, as currently plead, failed to state a federal claim upon which relief may be granted. Mr. Lake was given an opportunity to file an amended complaint on or before October 20, 2017. He failed to do so.

Accordingly, for the reasons set forth in the Court's September 15, 2017 Order (Doc. 7), the Court finds that Mr. Lake has failed to state a federal claim upon which relief may be granted and therefore issues the following:

RECOMMENDATIONS

1. This matter should be DISMISSED for failure to state a federal claim.

2. The Clerk of Court should be directed to close this matter and enter judgment in favor of Defendants pursuant to Rule 58 of the Federal Rules of Civil Procedure.

3. The Clerk of Court should be directed to have the docket reflect that the Court certifies pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good faith. No reasonable person could suppose an appeal would have merit. The record makes plain the Complaint lacks arguable substance in law or fact.

4. The Clerk of Court should be directed to have the docket reflect that this dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g) because Mr. Lake failed to state a claim upon which relief may be granted.

**NOTICE OF RIGHT TO OBJECT TO FINDINGS &
RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO OBJECT**

Mr. Lake may file objections to these Findings and Recommendations within fourteen (14) days after service (mailing) hereof.¹ 28 U.S.C. § 636. Failure to timely file written objections may bar a de novo determination by the district judge

¹Rule 6(d) of the Federal Rules of Civil Procedure provides that “[w]hen a party may or must act within a specified time after being served and service is made under Rule 5(b)(2)(C) (mail) . . . 3 days are added after the period would otherwise expire under Rule 6(a).” Therefore, since Mr. Lake is being served by mail, he is entitled an additional three (3) days after the period would otherwise expire.

and/or waive the right to appeal.

This order is not immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Fed.R.App.P. 4(a), should not be filed until entry of the District Court's final judgment.

DATED this 17th day of November, 2017.

/s/ John Johnston

John Johnston

United States Magistrate Judge